

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment)
of ARM 17.38.101 and 17.38.106)
pertaining to public water and)
sewage system requirements)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

(PUBLIC WATER SUPPLY)

TO: All Interested Persons

1. On November 18, 2002 at 1:30 p.m., in conjunction with the hearing for MAR Notice No. 17-176 and 17-178, the Board of Environmental Review will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., November 6, 2002, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@state.mt.us.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR WASTEWATER SYSTEM (1) through (3)(h)(ii) remain the same.

(4) Before commencing the construction, alteration or extension of a public water supply system or wastewater system, the applicant shall submit a design report along with the necessary plans and specifications for the system to the department or a delegated division of local government for its review and written approval. Two sets of plans and specifications are needed for final approval. Approval by the department or a delegated division of local government is contingent upon construction and operation of the public water supply or wastewater system consistent with the approved design report, plans, and specifications. Failure of the system to operate according to the approved plans and specifications or the department's conditions of approval is an alteration that requires resubmittal of a design report, plans, and specifications for department approval.

(a) through (c) remain the same.

(d) The board hereby adopts and incorporates by reference ARM 17.36.320 through 17.36.325, 17.36.327 and 17.36.345. The

design report, plans, and specifications for public subsurface sewage treatment systems must be prepared in accordance with ARM 17.36.320 through 17.36.325, 17.36.327 and 17.36.345 and in accordance with the format and criteria set forth in Circular DEQ-4, "Montana Standards for ~~On-Site~~ Subsurface ~~Sewage~~ Wastewater Treatment Systems, ~~2000~~ 2002 edition.

(e) through (12) remain the same.

(13) The board hereby adopts and incorporates by reference the following publications:

(a) through (c) remain the same.

(d) Department of Environmental Quality Circular DEQ-4 ~~2000~~ 2002 edition, which sets forth standards for ~~on-site~~ subsurface ~~sewage~~ wastewater treatment systems.

(14) remains the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, 75-6-112, 75-6-121, MCA

REASON: The Board is proposing to amend ARM 17.38.101, which concerns review and approval of plans and specifications for public drinking water supply systems and public wastewater disposal systems. The proposed amendments substitute the 2002 edition of Circular DEQ-4 for the 2000 edition currently adopted in the rules. The reason for this proposed amendment is that the Department of Environmental Quality (Department) is proposing to adopt a new version of DEQ-4, which concerns standards for subsurface wastewater (septic) systems, in a simultaneous rulemaking concerning subdivisions. The 2002 version of DEQ-4 reflects the consensus of a group of engineers, planners, and regulators that meet regularly to help specify standards for subsurface wastewater systems based on technological advances. Adoption of the most recent version of DEQ-4 is necessary in order to allow the Department's Public Water Supply section to use the same standards as the Department's Subdivisions section.

An explanation of the revisions contained in the 2002 version of DEQ-4 is contained in the Board's notice of proposed rulemaking in this administrative register at MAR Notice No. 17-176, in which the Board is proposing to adopt the revised Circular for use by counties in regulating wastewater treatment systems.

17.38.106 FEES (1) remains the same.

(2) Fees for review of plans and specifications are based on (2)(a) —(f) through (e) and (3) ~~below~~. The total fee for the review of a set of plans and specifications is the sum of the fees for the applicable parts or sub-parts listed in these

citations. Approval will not be given until fees calculated under this rule have been received by the department.

(a) The fee schedule for designs requiring review for compliance with department Circular ~~WQB-1, 1992~~ DEQ-1, 1999 edition, is set forth in Schedule I, as follows:

Schedule I remains the same.

(b) The fee schedule for designs requiring review for compliance with department Circular ~~WQB-2, 1995~~ DEQ-2, 1999 edition, is set forth in Schedule II, as follows:

Schedule II remains the same.

(c) The fee schedule for designs requiring review for compliance with department Circular ~~WQB-4, 1992~~ DEQ-4, 2002 edition, is as specified in the fee schedule in ARM 17.36.802 for wastewater disposal systems. ~~to be determined under Schedule III, as follows:~~

~~SCHEDULE III~~

Chapter 20 Sewers.....	\$ 50
Chapter 50 Septic tank.....	\$ 50
Chapter 30, 40 & 60 Subsurface treatment	
gravity.....	\$ 150
dosed.....	\$ 250

(d) The fee schedule for designs requiring review for compliance with department Circular ~~WQB-3, 1992~~ DEQ-3, 1999 edition, is to be determined under Schedule ~~IV~~ III, as follows:
Schedule IV remains the same, but is renumbered III.

~~(e) The fee for all alternative on-site sewage treatment design requiring review for compliance with department Circular WQB-5, 1992 edition, is \$350 per design.~~

~~(f)~~ (e) The fee schedule for the review of plans and specifications not covered by a specific department design standard but within one of the following categories is to be determined under Schedule ~~V~~ IV as follows:

Schedule V remains the same, but is renumbered IV.

(3) Fees for review of plans and specifications not covered under (2) ~~of this rule~~, are established by the department based on a charge of ~~\$26~~ \$50 per hour multiplied by the time required to review the plans and specifications. The review time applied to each set of plans and specifications will be determined by the review engineer and documented with time sheets. The maximum fee for the review of plans and specifications specified under this section is \$500.

(4) and (5) remain the same.

AUTH: 75-6-108, MCA

IMP: 75-6-108, MCA

REASON: The Board is proposing to amend ARM 17.38.106, which concerns fee schedules for plans and specifications review for public drinking water supply systems and public wastewater disposal systems, to substitute "DEQ" for "WQB" in the names of four Department Circulars, and to identify the current version of the circular being cited. Those Circulars specify the standards that public water supply and wastewater systems need to satisfy to obtain Department approval. The names of Circulars WQB-1, WQB-2, and WQB-3 were changed to Circulars DEQ-1, DEQ-2, and DEQ-3 in 1999 through rulemaking that amended ARM 17.38.101, which contains the plans and specifications requirements for public drinking water systems and public wastewater disposal systems. See 1999 Montana Administrative Register, Issue No. 7, p. 578 (proposal) and 1999 Montana Administrative Register, Issue No. 17, p. 1895 (adoption). The name changes were made along with editorial changes that were not intended to change the substance of the Circulars. Several hearings were held around the state and the public was given an opportunity to review and comment on the amendments. Although the names of the Circulars were changed in ARM 17.38.101 in 1999, ARM 17.38.106, which sets fees for review work performed by the Department of projects submitted under those Circulars, was not amended to reflect the names of the new Circulars. The Board is proposing to correct the rule by changing the names of the Circulars in this rulemaking.

The Board is also proposing to amend ARM 17.38.106(2)(c), (e), and (3), which set the fees that the Department charges for review of plans and specifications for public wastewater disposal systems. The proposed amendment would make the review fees that the Department's public water supply section charges the same as the fees charged by the Department's subdivision section for review of the same type of systems. The existing rule (ARM 17.38.106(2)(c) and (e)) sets fees that the Department charges for work done to review plans submitted under Circulars WQB-4 and WQB-5. Because all subsurface onsite wastewater systems are now covered in Circular DEQ-4, and Circular WQB-5 no longer exists, the proposed rule amendments eliminate the reference to Circular WQB-5 and refer only to the 2002 edition of Circular DEQ-4. The Board is also proposing to delete Schedule III in ARM 17.38.106(2)(c) to delete the fees set forth in that schedule and to adopt the same fees that the Department's subdivision section charges under ARM 17.36.802 for review of wastewater disposal systems. Schedules IV and V are being renumbered III and IV.

The existing fee schedule in ARM 17.38.106 assesses:

1. \$50 for review of sewer mains;
2. \$50 for review of septic tanks;

3. \$150 for review of gravity drainfields;
4. \$250 for review of dosed drainfields; and
5. \$26 per hour for review of other items.

The schedule in ARM 17.36.802 that is proposed to replace the above fee schedule would assess:

1. \$60 for review of gravity drainfields;
2. \$150 for review of pressure-dosed systems, elevated sand mound systems, evapotranspiration systems, intermittent sand filter systems, evapotranspiration/absorption systems, recirculating sand filter systems, recirculating trickling filter systems, aerobic treatment systems, and nutrient removal systems (plus \$50 per hour for review in excess of 3 hours);
3. \$30 for review of pressure-dosed drainfields that serve pressure-dosed systems, elevated sand mound systems, intermittent sand filter systems, and recirculating sand filter systems; and
4. \$50 per hour for review of other items.

These revisions are necessary to make the fees the same for the same type of proposed system, regardless of whether the Department, subdivision or public water supply section conducts the review.

The cumulative effect of the fees is as follows: the Department estimates that approximately five applicants per year would be affected by the change. The average applicant would be charged about \$150 in increased fees. Therefore, the cumulative increase would be about \$750.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386, or emailed to ber@state.mt.us, no later than 5:00 p.m., November 26, 2002. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Thomas Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their names added to the list shall make a written request that includes the name and mailing address of the person to receive notices regarding any of the following topics: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator

certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulations; hard rock (metal) mine reclamation; major facility siting; open-cut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 East Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to the Board Secretary at ber@state.mt.us, or may be made by completing a request form at any rules hearing held by the Board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

James M. Madden

BY: Joseph W. Russell

JAMES M. MADDEN
Rule Reviewer

JOSEPH W. RUSSELL, M.P.H.
Chairman

Certified to the Secretary of State, October 7, 2002.